aware and West Virginia, plaintiffs, and citizens of Maryland and Washington, defendants; one of the defendants, a resident of the forum, attempted to remove the suit to the Federal court, on the ground that it was a separable controversy within the meaning of § 28 of the Judicial Code. *Held*, the case will be remanded to the State court. *Whitaker* v. *Coudon*, 217 Fed. 139.

In a controversy, wholly between citizens of different States, where none of the defendants reside in the forum, if the action is brought in a State court the defendants may remove the cause to the United States district court. *Munford Rubber Tire Co.* v. *Consolidated Rubber Tire Co.*, 130 Fed. 496; Act Mar. 3, 1911, c. 231, 36 Stat. 1094, U. S. Comp. Stat. (Supp. 1911) 140. In this case the statute expressly provides that all the defendants must be non-residents; and a like provision is found in a later clause in the same section, where provision is made for removal of causes on the ground of local prejudice or influence. Another clause in this same section provides that in any suit where there is a separable controversy between citizens of different States, any defendant, a party to such separable controversy, may remove the cause; but the statute is silent on the question whether in this instance the defendant removing must be a non-resident of the forum. The weight of authority, viewing these clauses as independent provisions, takes the view that a defendant removing under the separable controversy clause may be a resident of the forum; based on the ground that the express restriction found in the other two clauses of the section does not appear in this clause. *Stanbrough* v. *Cook*, 38 Fed. 369, 3 L. R. A. 400; *National Bank* v. *Howard*, 54 Misc. 82, 103 N. Y. Supp. 814. On principle the opposite conclusion would seem preferable. The clause in question is a further extension of the diverse citizenship cases, and the intention of Congress seems to have been to confine the right of removal in all these cases to the non-resident defendant. No reason, aside from a literal construction of the statute, can be adduced for a distinction in these cases. See *Thurber* v. *Miller*, 67 Fed. 371.

INSURANCE—FIRE INSURANCE—HOSTILE AND FRIENDLY FIRES.—The plaintiff operated a laundry which was insured by the defendant. Due to a failure to keep sufficient water in the boiler, damage thereto resulted from the heat of the fire in the furnace. *Held*, the defendant is not liable. *McGraw* v. *Home Ins. Co. of New York* (Kan.), 144 Pac. 821.

The principal case involves the distinction between hostile and friendly fires. A fire is friendly when it burns in the place intended for it to burn though damage results from its negligent maintenance. It is a hostile fire when it burns outside of the place intended for it to burn, either in its inception or afterwards. To constitute loss by fire within the meaning of a fire insurance policy the damage must result from a hostile fire. *American Towing Co.* v. *German Fire Ins. Co.*, 74 Md. 25, 21 Atl. 553; *Fitzgerald* v. *German-American Ins. Co.*, 30 Misc. Rep. 72, 62 N. Y. Supp. 824. But though the fire was friendly, where it was excessive for the purpose for which it was intended the opposite conclusion has been reached. *O'Connor* v. *Queen Ins. Co. of America*, 140 Wis. 388, 122 N. W. 1038. Fire in a chimney caused by soot burning is a

hostile fire, and recovery may be had for damage resulting therefrom. *Way* v. *Abington Mut. Fire Ins. Co.*, 166 Mass. 67, 43 N. E. 1032, 55 Am. St. Rep. 379, 32 L. R. A. 608. But where property was damaged by soot and smoke from a defective stovepipe it is held there can be no recovery. *Cannon* v. *Phœnix Ins. Co.*, 110 Ga. 563, 35 S. E. 775. Where the policy stipulates against liability for loss caused by explosion, the insurer will nevertheless be liable if the explosion results from a hostile fire. *LaForce* v. *Williams City Ins. Co.*, 43 Mo. App. 518. Here the explosion is regarded as a proximate result of the peril insured against. But the opposite is true where the explosion results from a friendly fire. *Briggs* v. *North American Ins. Co.*, 53 N. Y. 446; *Mitchell* v. *Potomac Ins. Co.*, 183 U. S. 42. Here the explosion is the proximate cause of the loss.

INTOXICATING LIQUOR—SALE WITHOUT A LICENSE BY A SOCIAL CLUB—INTERPRETATION OF LICENSE STATUTES.—A *bona fide* social club sold liquor to its members without first obtaining a license. The State statute forbade a sale of liquor without a license. *Held*, the transaction was a sale within the meaning of the statute. *State* v. *Missouri Athletic Club* (Mo.), 170 S. W. 904. See NOTES, p. 382.

OFFICERS—DE JURE AND DE FACTO—DE JURE CLAIMANT'S RIGHT TO RECOVER FEES AFTER PAYMENT TO DE FACTO OFFICER.—A municipal corporation paid to a *de facto* officer the salary attached to his office, payment being made under decree of court. The *de jure* holder of the office then sought to recover his salary from the municipality. *Held*, he is entitled to recovery. *Baker* v. *Nashua* (N. H.), 91 Atl. 872.

By the weight of authority a *de jure* officer whose salary has been paid to a *de facto* claimant has no recourse except against the claimant himself. *Samuels* v. *Harrington*, 43 Wash. 603, 86 Pac. 1071, 117 Am. St. Rep. 1075. And the same decision has been reached even where it was known that the *de facto* officer's claim was contested, and that he was insolvent. *Commissioners* v. *Anderson*, 20 Kan. 298, 27 Am. Rep. 171. And even where both claimants were actually performing the duties of the office. *Walters* v. *Paducah* (Ky.), 123 S. W. 287.

It would seem that the majority rule is not in harmony with the legal principles applied in other cases involving the rights of *de facto* and *de jure* officers to salary and other profits. The *de jure* officer's right to his salary does not depend upon his performing the duties of the office, and he may recover salary and fees paid to the *de facto* officer by proceeding against such officer himself. *U. S. ex rel. Crawford* v. *Addison*, 6 Wall. 291. This rule is applied even where the *de facto* officer acts in good faith, or under a judgment of court; but in such case the *de facto* officer is allowed the actual expenses of performing the duties of the office. *Sandoval* v. *Albright*, 14 N. M. 345, 93 Pac. 717; *Lawrence* v. *Wheeler*, 90 Kan. 669, 136 Pac. 315. Under similar circumstances, however, a *de facto* officer who could have been penalized for failing to perform the duties of the office was allowed to retain the fees already received. Five judges dissented from this decision. *Stuhr* v. *Curran*, 44 N. J. L. 181, 43 Am. Rep. 353.